

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	ID No. 82002234DI
	)	
BRUCE J. CARR,	)	
	)	
Defendant.	)	

Submitted: January 10, 2006  
Decided: March 1, 2006

**ORDER**

**UPON DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF**

**DENIED**

Upon review of Movant Bruce J. Carr (“Defendant”)’s Motion for Postconviction Relief and the record, it appears to the Court that:

1. Defendant was convicted in Superior Court of four counts of kidnapping first degree, four counts of conspiracy first degree, one count of rape first degree, and two counts of attempted rape first degree. Defendant was sentenced to six consecutive life terms, plus forty years. On direct appeal, the Delaware Supreme Court affirmed Defendant’s convictions.<sup>1</sup>

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<sup>1</sup>*Carr v. State*, Del.Supr., No. 322, 1982, Horsey, J. (November 9, 1983)(Order).

2. Defendant previously filed eight successive motions for postconviction relief; seven of which were denied by this court, and affirmed on appeal by the Delaware Supreme Court. Defendant's eighth postconviction relief motion was denied by the Superior Court on November 10, 1988.

3. Defendant's current motion for postconviction relief was filed on December 30, 2005. In support of his motion, Defendant alleges ineffective assistance of counsel. Defendant asserts: "In light of the 2005 ruling in *Evans v. State* case, Carr should have been sentenced to one life sentence instead of six life sentences because of the sentencing guidelines at the time of his sentence."

4. In evaluating a postconviction relief motion, the Court must first ascertain if any procedural bars of Superior Court Criminal Rule 61(i) apply to the case.<sup>2</sup> If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims.<sup>3</sup> This Court will not address claims for postconviction relief that are conclusory and unsubstantiated.<sup>4</sup> Pursuant to Rule 61(a), a motion for postconviction relief must be based on "a sufficient factual and legal basis." In

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<sup>2</sup> See *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990); Super. Ct. Civ. R. 61(i).

<sup>3</sup> See *id.*

<sup>4</sup> See *Younger.*, 580 A.2d at 555; *State v. Conlow*, Del. Super., Cr. A. No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr. A. No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

addition, pursuant to Rule 61(b)(2), "[t]he motion shall specify all the grounds for relief which are available to movant ..., and shall set forth in summary form the facts supporting each of the grounds thus specified." Any ground for relief not asserted in a prior postconviction relief motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.<sup>5</sup> Similarly, grounds for relief not asserted in the proceedings leading to the judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default, and (2) prejudice from the violation of movant's rights.<sup>6</sup> Any ground for relief that was formerly adjudicated, whether in a proceeding leading to the judgment of conviction, in an appeal, or in a postconviction proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.<sup>7</sup>

5. Defendant previously has filed several motions for postconviction relief. Therefore, the procedural bar of Rule 61(i)(2) is applicable as to any ground for relief **not** asserted by Defendant in the earlier motions for postconviction relief, and any ground for relief that **was** asserted in those motions is barred by Rule 61(i)(4).

6. Rule 61(i)(1) provides that the motion may not be filed more than one

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<sup>5</sup>Del. Super. Ct. Crim. R. 61(i)(2).

<sup>6</sup>Del. Super. Ct. Crim. R. 61(i)(3).

<sup>7</sup>Del. Super. Ct. Crim. R. 61(i)(4).

year after judgment of conviction is final or one year after a newly-discovered retroactively applicable right is recognized by the United States Supreme Court or the Delaware Supreme Court.

7. Because Defendant's judgment of conviction was final almost two decades ago, unless a newly-discovered, retroactively-applicable right was recognized by the United States Supreme Court or the Delaware Supreme Court within the past year, Defendant's motion is procedurally barred by Rule 61(i)(1).

8. Defendant claims that in light of the Delaware Supreme Court's 2005 decision in *Evans v. State*,<sup>8</sup> his sentence should be reduced. Defendant, however, does not specify how that ruling would change Defendant's sentence to one, rather than six life sentences.

9. *Evans* does not apply to Defendant's situation. The *Evans* Court's holdings pertain to inmates sentenced to life with possibility of parole who are eligible for conditional release,<sup>9</sup> and discretion of the Parole Board in the release of inmates on parole under the statute governing eligibility for parole.<sup>10</sup> Defendant has not raised these issues in his Motion.

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<sup>8</sup>*Evans v. State*, 872 A.2d 539 (Del. 2005).

<sup>9</sup>*Id.* at 558.

<sup>10</sup>*Id.* at 554.

10. The interest of justice exception to the procedural bars, upon which Defendant might be relying, is narrowly construed, and not applicable. To trigger this exception, “movant must show that subsequent legal developments have revealed that the trial court lacked authority to convict or punish him.”<sup>11</sup>

11. Defendant’s motion for postconviction relief must be denied as it is procedurally barred pursuant to Superior Court Criminal Rules 61(i)(1), (2), and (3). To protect the integrity of the procedural rules, the Court will not consider the merits of the postconviction claims where a procedural bar exists.<sup>12</sup>

Based upon the foregoing, Defendant’s Motion for Postconviction Relief is **DENIED.**

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY’S OFFICE - CRIMINAL DIV.

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<sup>11</sup>*Flamer v. State*, 585 A.2d 736, 746 (Del. 1994).

<sup>12</sup>*State v. Gattis*, Del. Super., Cr. A. No IN90-05-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d. at 554; *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995)(ORDER); *Hicks v. State*, Del. Supr., No. 417, 1991, Walsh, J. (May 5, 1992)(ORDER).

